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certain questions involving the conditions of labor are given appropriate attention.

A book consisting wholly of selected papers can with difficulty cover the entire field of a subject adequately, without becoming somewhat bulky. This difficulty the editor has largely overcome. Still it is to be regretted both for the benefit of the student and the lay reader that such subjects as wages, unemployment, standard of life, and the relation of immigration to the general conditions of American labor did not receive more specific attention. The book, however, is invaluable to the student; it places in accessible form a mass of most important material, and heartily commends itself to the reader.

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G. B. MANGOLD.

#### Literature on the Railway Rate Question.

- Haines, Henry S.** *Restrictive Railway Legislation.* Pp. 355. Price, \$1.25. New York: The Macmillan Company, 1905.
- Noyes, Walter C.** *American Railroad Rates.* Pp. 277. Price, \$1.50. Boston: Little, Brown and Company, 1905.
- Meyer, Hugo R.** *Government Regulation of Railway Rates.* Pp. xxvii, 486. Price, \$1.50 net. New York: The Macmillan Company, 1905.
- Ripley, William Z.** *The Trunk Line Rate System: A Distance Tariff.* Pp. 28. Price 75 cents. Boston: The Quarterly Journal of Economics, February, 1906.
- McLean, S. J.** *The English Railway and Canal Commission of 1888.* Pp. 58. Price 75 cents. Boston: The Quarterly Journal of Economics, November, 1905.

The earnest effort that is being made by the American people and by Congress to solve the problem of governmental regulation of railway transportation has resulted in the production of several books and papers by technical and academic writers. This review is concerned with three books and two papers whose importance demands more than a passing notice.

Mr. Henry S. Haines, the author of the volume entitled "Restrictive Railway Legislation," is an engineer and railway manager of high standing. For a number of years Mr. Haines was vice-president and general manager of the Plant System of railroad and steamship lines. For a while Mr. Haines was commercial manager of the Southern States Freight Association and for some time he was president of the American Railway Association, for the development of which organization, he, more than anybody else, is entitled to credit. The volume on American Railway Management, published a few years since, contained a number of valuable and influential papers. The past record of Mr. Haines gives him a high rank among writers on railway transportation.

The present volume contains twelve lectures delivered in April and May, 1905, before the Boston University School of Law. The fact that the

chapters were written to be delivered as lectures accounts, in part at least, for the general and somewhat superficial treatment of the subjects considered. The lectures dealt with railway corporations, railroad finance, construction, operation, traffic, and rate making, and discussed the theory and practice of governmental regulation of railway rates in the United States.

The book is eminently fair and impartial. The work is not scholarly in the sense of being the result of the study of literature, but is practical in that it presents the results of a long and varied experience as railroad manager. Of the three books considered in this review, the book by Mr. Haines is unquestionably the best, despite the fact that the subjects discussed in the volume are not treated systematically. The historical portions of the book suffer from the author's inadequate study of the literature of transportation. The history of traffic associations and pooling is especially brief and superficial, and the account of the granger legislation is inadequate. Mr. Haines's views upon the burning question of Federal regulation of railroads are sound and conservative. He is of the opinion that a law empowering the Interstate Commerce Commission to adjust rates will not work to the detriment of the railway interests, nor that such a law will transfer to the railway officials or to the commission the general business of rate making.

"The very fact that there were filed with the Commission in 1903 some 160,000 tariffs and over 250,000 concurrences in joint rates demonstrates the fallacy of such a notion. The Commission could assume no such general rate-making power, simply because it would be impracticable. Only in the cases in which the railroad companies acquiesced would the ideas of the Commission as to exact rates have any immediate effect; for in the other cases, in which the railroad management felt that the orders of the Commission were erroneous, they would have all the protection afforded to any other interest which may be affected injuriously by restrictive legislation.

"Indeed, the action taken by the railroad managements recently, in voluntarily submitting the adjustment of differentials at the North Atlantic ports to arbitration by members of the Interstate Commerce Commission, rather precludes them from questioning the competency of the Commission, *in banco*, to fix just and reasonable rates, since this is one of the rate problems most difficult of adjustment,—one which the managers of our most important lines had confessedly been unable to determine among themselves."

The author of the work on "American Railroad Rates" is Judge Walter C. Noyes of the Court of Common Pleas of Connecticut. Judge Noyes is the president of a small local railroad company, and the author of a volume on "The Law of Intercorporate Relations." His book on railroad rates contains ten chapters in which he discusses the theory and practice of rate making, classification of freight, discrimination, competition, and State and Federal regulation.

Judge Noyes's book is sound in principle, impartial in spirit, and clear in statement, but its value is lessened by the fact that it is in greater part an elementary presentation of what has been more fully stated by more

than one previous writer. Indeed, it is difficult to understand why the volume was written, except upon the theory that many books upon the same subject are better than a few.

The discussion of freight classification constitutes a good feature of the book and is the best presentation that has yet been made of that subject. General students of railroad rates are under obligations to Judge Noyes for the information contained in this portion of his volume.

The most interesting chapters of Judge Noyes's book, and indeed the only part of the volume which may lay claim to originality, is that in which he discusses the power of the State and Federal governments as regards the regulation of railroad rates. The author draws a sharp distinction between reasonable and confiscatory rates. He holds that the courts have the power to condemn a rate fixed by a carrier if the rate is *unreasonable*, but when the rate is one fixed by legislation the courts can only decide whether or not the charge thus fixed is *confiscatory*. In the discussion of this question he uses the following language:

"The courts, under the common law, have power to pass upon the reasonableness of the charges of common carriers. In determining the question of reasonableness, the courts must consider all the factors entering into the rate. They may substitute their judgment of a just and proper charge for that of the carrier. But the courts cannot substitute their judgment of a reasonable rate in place of that of the legislature or the legislature's subordinate body. The act of the legislature in fixing a rate is a law that such shall be the rate. The courts can no more question its expediency or propriety than in the case of any other law. It is immaterial whether they think, under all the circumstances, that it should have been greater or less. The courts have nothing to do with legislative-made rates except to determine whether they violate constitutional provisions. The inquiry is whether the rates prescribed by law are so unreasonably low as to infringe the property rights of the railroad. The duty of the courts is to determine whether the rates are confiscatory, not whether they are fair between shipper and carrier."

. . . "And it makes no difference that the statute empowering the commission to act provides that rates shall be reasonable and just. This is a general rule for the commission, but the discretion to be exercised in determining what rates *are* reasonable and just is the discretion of the commission upon which the discretionary power has been conferred, and not of the courts upon which the power has not been conferred. If a definite standard were prescribed according to which rates should be made by a commission—e. g. that they should be two cents per ton-mile, the courts might be called upon to determine whether the commission had departed from the rule and thereby exceeded its delegated powers. But the courts could not substitute their opinion of reasonableness—where there is no definite standard—for that of the commission unless the limit of confiscation were reached. And this for two reasons based upon the same principles:

"(1) The courts cannot participate directly or indirectly in the exercise of the legislative rate-making function.

"(2) The courts cannot interfere with the exercise of legislative power except upon constitutional grounds."

Judge Noyes takes the ground that a commission cannot be given the power to pass upon the reasonableness of an existing rate because the determination of a controversy involving "the reasonableness of an existing rate" is a judicial function, and "judicial and legislative functions cannot be combined." This exposition of the law is in accordance neither with the practice of the American States nor with the theories of the powers of the Congress as expounded by Senator Knox and other leading lawyers of the United States Senate.

The above interpretation of the powers of Congress and the courts leads Judge Noyes to advocate an interesting plan of governmental regulation of railroad rates. His method would be the creation of a special court to try complaints regarding railroad charges. If rates thus complained of were found to be reasonable, the complainants would have no further action. "If the rates were found to be unreasonable, the court would be empowered to enjoin further collection of the rate, and it would become the duty of the court to send the papers in the case, together with the evidence, to the Interstate Commerce Commission which should be empowered, upon inspection of the papers, to then make a maximum rate to take the place of that found unreasonable by the court. The rate prescribed should remain in force a prescribed time, but should be subject to modification by the commission. No hearing before the commission would be necessary or expedient. Speedy action would be possible and should be required."

This plan of governmental regulation is open to the criticism not only of being based upon a questionable interpretation of the powers of the Congress under the Constitution, but also of being a method that would probably not work satisfactorily. To compel a complainant to establish the fact of an unreasonable rate by the ordinary processes of the courts, and then to wait for the commission to pass upon the questions of fact that had been before the court and to reach a decision, would so delay the settlement of the controversy as to deter most shippers from endeavoring to seek a remedy. Moreover, the functions of the commission would become so unimportant that the court would become the real investigator of the facts, whereas the law intends that the facts should be investigated by a non-judicial body such as the commission.

Professor H. R. Meyer's book on "Government Regulation of Railway Rates" has attracted wide attention, and has been much discussed because it presents a vigorous argument against the extension of governmental authority at a time when that subject is the leading public question. The author is one of the few economists who believe in the "regime of individualism," or governmental non-interference. Unfortunately the author is temperamentally a doctrinaire and an advocate. His book evinces a great amount of study, but the results of his labor are greatly injured by the author's unscientific spirit.

The general problem of governmental interference in the matter of railroad charges is excellently stated in the opening paragraph of the

Introduction to the book: "The problem of the public regulation of railway rates is threefold. It involves: first, the question of personal discriminations by means of secret departures from the published rates; secondly, the question of the reasonableness of rates *per se*; and, lastly, the question of the relative reasonableness of rates. Lack of space compels the dismissal of the first and second questions with a few brief statements."

Professor Meyer is altogether correct in saying that the great problem of governmental regulation is that of securing the relative reasonableness of rates. Professor Meyer's book, however, is written not to state all the facts upon both sides of a controverted question, but rather to prove the following thesis, also contained in the Introduction of his book: "Every effective effort to regulate railway rates in general will arrest the decline of rates, by producing a dead-lock of conflicting sectional interests, will prevent the railways from developing a volume of traffic sufficiently large to justify the maintenance or the building of railways of the highest attainable efficiency, will check the development of the resources of the country, and will demoralize the politics of the country."

The first half of the volume is devoted to a survey of the methods and results of governmental regulation of railways in foreign countries—Germany, France, Austria-Hungary, Danubian Principalities, Russia and Australia. About one half of the space given to foreign countries is taken up with a discussion of the Prussian railway policy.

The author's vigorous condemnation of the railway policy of Prussia and other foreign countries loses much of its force from the fact that the author has never visited any of the countries under consideration; he has never seen what he is discussing. Doubtless the polemic would—in spite of the author's preconceived antipathy to State interference—have been much milder had he studied foreign railway management on the ground, and had he gotten his information regarding each country directly from the lawmakers, state officials, and railway managers who are responsible for the railroad policy under investigation. This method of study would also have enabled the author to avoid numerous errors of fact and judgment contained in his volume. Prof. B. H. Meyer of Madison, Wis., who is the best informed man in the United States regarding the German railway management, has pointed out in a long article in the Journal of Political Economy for February, 1906, a large number of mistakes in the facts contained in Prof. H. R. Meyer's book. In view of the criticism by Prof. B. H. Meyer it is unnecessary to enumerate in detail the errors contained in Part I of the volume under review.

Part II of the book is concerned with the railroad problem in the United States. The first four chapters of this half of the book are unquestionably the best in the volume. They contain a concise and in most respects an accurate, account of the geography of American industry and trade. The last six chapters of the book deal with the work of the Interstate Commerce Commission and are the weakest portion of the volume. From a literary point of view these chapters are especially defective, because of inexcusable padding. Page after page is devoted to quotations from the decisions of the

Supreme Court when a brief statement of the conclusion reached by the Court would have been preferable. The discussion contained in the two hundred pages devoted to the Interstate Commerce Commission would have been greatly improved had it been reduced to one hundred pages in length.

Method of treatment, however, is unimportant as compared with the content of what is said. The author's bias distorts his view, causes him to state only such facts as bear out his contentions, and leads him to misrepresent totally the work of the commission. The following paragraph near the end of the volume will illustrate the character of the author's discussion of the activity of the Interstate Commerce Commission.

"The foregoing review of the decisions of the Interstate Commerce Commission has shown that the commission has condemned all but one of the rate practices by means of which the railways have made themselves the most powerful single factor in the development of the resources, industry and trade of our country. That single exception was the approval of the practice of giving Philadelphia, Baltimore, and the other northern Atlantic ports differentials which permitted those ports to become competitors of New York City in the export of agricultural products and of manufactures. It is important to note that that approval came after the Supreme Court had completely reversed the commission in *Interstate Commerce Commission vs. Texas and Pacific Railroad Company* (162 U. S. 197) and *Interstate Commerce Commissioner vs. Alabama Midland Railway Company* (168 U. S. 144) and had instructed the commission that the Act to Regulate Commerce was enacted for the purpose of promoting trade, not for the purpose of throttling it. In the interpretation of that act, the court had said that due consideration must be given to all the interests affected, and that attention must not be fixed exclusively upon the interest represented by the complainant."

A grosser misrepresentation could hardly be made of the work of the Interstate Commerce Commission and of the policy it has followed in dealing with the great question of the adjustment of rates.

The chapters in Prof. Meyer's book that have attracted the most attention are those in which he condemns the railway rate policy followed by the Prussian Government. He contends that Prussia has enforced distance tariffs, that the rates have been inflexible, and that the industrial growth of the country has greatly suffered thereby. The most complete answer to this indictment is made by Professor William Z. Ripley in his admirable paper on "The Trunk Line Rate System: A Distance Tariff."

"The trunk line freight rate system effectively demonstrates certain principles in railway economics which are of importance at the present time in connection with the problem of Federal regulation." . . . "The fallacy of certain objections to governmental control is revealed with corresponding clearness. Three principles in particular deserve mention in this connection. These are (1) that the element of distance should be a prime factor in the final adjustment of rates between competing localities; (2) that co-operation and agreement between competing carriers are essential to any comprehensively fair system; and (3) that permanency and stability of rates are of equal importance with elasticity. . . . "That distance tariffs, modified

in part to suit commercial conditions, are not only theoretically sound, but entirely practicable, this study aims to prove. The bogey of German rate schedules vanishes into thin air when it appears that the greatest railway companies in the United States have for years adopted the same principles in working out their tariffs."

Prof. Ripley's essay is an important contribution to the discussion of railway rates in the United States. The paper states the causes which led to the system of rates prevailing in trunk line territory; explains and charts the rate percentages prevailing in different parts of this section of the country; and shows that the rates on classified freight in this, the most important traffic territory in the United States, in reality rest upon a zone distance basis. This system of tariffs was worked out many years ago and only minor changes in detail have since been made.

Prof. S. J. McLean of Leland Stanford Jr. University is well known to students of transportation as a result of the investigations which he made for the Canadian Government concerning the governmental regulation of railroads. His paper on "The English Railway and Canal Commission of 1888" is in reality a short monograph fifty-eight printed pages in length. It contains the first thorough presentation in English of the work of the British Railway and Canal Commission. The essay opens with an account of British legislation from 1873 to 1888, and then discusses the manner in which the British Commission, acting under the law of 1888, has dealt with "terminals, reasonable facilities, and through rates." The third part of the essay discusses the question of "undue preference," while the fourth part of the essay explains the nature of the British Commission's "control over actual rates." The fifth and sixth parts of the essay discuss the personnel and work accomplished by the commission. Tables appended to the paper present in detail the "subject matter of the applications" made to the commission, the "cases withdrawn or settled either in court or outside," and the "cases appealed from the railway and canal commission." The essay ends with a brief comparison of the British and American railway commissions.

Scientific impartiality characterizes Prof. McLean's paper in every part. The author's investigation has been thorough, and the publication of the essay at the present time is most opportune.

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**Hunt, William and Poole, Reginald Lane (Editors).** *The Political History of England*, in twelve volumes. Vol. I, From the earliest Times to 1066, by Thomas Hodgkin; Vol. II, 1066-1216, by George B. Adams; Vol. III, 1216-1377, by T. F. Tout. Price \$2.60 per volume. London, New York, and Bombay: Longmans, Green & Co., 1906.

The general character and ideals of this series have been already discussed in a review of the first volume that appeared,<sup>1</sup> and our present task, therefore, is restricted to a notice of volumes one, two, and three of the series, which have appeared during the last few months. These three volumes cover the period from the earliest times continuously to the year 1377, thus

<sup>1</sup> Annals Vol. xvii, p. 437.